

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Max Bernstein	Team: Team # 6	CCRB Case #: 201203271	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/12/2012 11:50 AM	Location of Incident: 129th Avenue and Guy R. Brewer Boulevard	Precinct: 113	18 Mo. SOL 9/12/2013	EO SOL 9/12/2013	
Date/Time CV Reported Mon, 03/12/2012 12:31 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 03/12/2012 12:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Aaron Klein	02374	935119	113 PCT
2. POM James Weibert	21849	945343	113 PCT
3. POM Matthew Tiernan	24019	946325	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Aaron Klein	Abuse: Sgt. Aaron Klein supervised the stop of the car in which § 87(2)(b) was an occupant.	
B.POM James Weibert	Abuse: PO James Weibert frisked § 87(2)(b)	
C.POM James Weibert	Abuse: PO James Weibert searched the car in which § 87(2)(b) was an occupant.	
D.POM Matthew Tiernan	Abuse: PO Matthew Tiernan searched the car in which § 87(2)(b) was an occupant.	
E.SGT Aaron Klein	Abuse: Sgt. Aaron Klein supervised the search of the car in which § 87(2)(b) was an occupant.	
F.POM James Weibert	Abuse: PO James Weibert refused to provide his name and shield number to § 87(2)(b).	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On March 12, 2012, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System. On March 12, 2012, at approximately 11:50 a.m., § 87(2)(b) was pulled over near the intersection of 129th Avenue and Guy R. Brewer Boulevard in Queens and the following allegations resulted:

- **Allegation A: Abuse of Authority—Sgt. Aaron Klein supervised the stop of the car in which § 87(2)(b) was an occupant.**
§ 87(2)(b), § 87(2)(g)
- **Allegation B: Abuse of Authority—PO James Weibert frisked Davis § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- **Allegation C: Abuse of Authority—PO James Weibert searched the car in which § 87(2)(b) was an occupant.**
- **Allegation D: Abuse of Authority—PO Matthew Tiernan searched the car in which § 87(2)(b) was an occupant.**
- **Allegation E: Abuse of Authority—Sgt. Aaron Klein supervised the search of the car in which § 87(2)(b) was an occupant.**
§ 87(2)(b), § 87(2)(g)
- **Allegation F: Abuse of Authority—PO James Weibert refused to provide his name and shield number to § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)
- § 87(2)(g), § 87(4-b)
- § 87(2)(g), § 87(4-b)
§ 87(2)(b), § 87(2)(g), § 87(4-b)

On March 16, 2012 and March 23, 2012, mediation was presented to § 87(2)(b) and he rejected on both occasions.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old Black male, who stands 5'6" tall, weighs 170 pounds, and has black hair and brown eyes.

CCRB Statement:

On March 16, 2012, § 87(2)(b) provided a telephone statement (encl. 7A-B) and on March 23, 2012, § 87(2)(b) provided an in-person CCRB statement (encl. 8A-N). § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On March 12, 2012, at approximately 11:45 a.m., § 87(2)(b) was at the 25 Laundromat located at 109th Avenue and Guy R. Brewer Boulevard in Queens. While § 87(2)(b)'s clothes were in the dryer, he decided to go to Walgreens on Baisley Boulevard. § 87(2)(b) got into his black 2001 Lexis GS460 four-door sedan and started driving South on Guy R. Brewer Boulevard. § 87(2)(b) was alone in his vehicle. As § 87(2)(b) passed 118th Avenue, he saw a blue Impala driving North on Guy R. Brewer Boulevard. § 87(2)(b) noticed the blue Impala in his rear view mirror when its brake lights lit up, and the vehicle made a 3-point turn so that it was driving the same direction as § 87(2)(b) South.

As § 87(2)(b) was approaching the Walgreens, the blue Impala turned its sirens and flashing lights on. § 87(2)(b) pulled over and three officers dressed in plainclothes exited the RMP. The driver of the vehicle (identified through investigation as Officer James Weibert of the 113th Precinct) approached § 87(2)(b)'s driver's side window, another officer (identified through investigation as Officer Matthew Tiernan of the 113th Precinct) approached the passenger's side front window, and the last officer (identified through investigation as Sergeant Aaron Klein of the 113th Precinct) approached the rear of the vehicle on the passenger's side. § 87(2)(b) indicated that when he was pulled over, he rolled his front windows down.

Officer Weibert asked § 87(2)(b) for his license and registration, and § 87(2)(b) provided the items. Officer Weibert then asked § 87(2)(b) if there was any marijuana in the car or if § 87(2)(b) had any marijuana on his person. § 87(2)(b) explained that he did not and added that he does not smoke, however, in § 87(2)(b)'s initial complaint, he stated that he does smoke cigarettes. Officer Weibert asked if anyone had been in the vehicle recently who was in possession of marijuana. § 87(2)(b) stated that there was no marijuana in his car, there had never been marijuana in his car, and there was certainly no smell of marijuana emanating from the vehicle. Officer Weibert told § 87(2)(b) "Don't worry. We're not the weed police." Officer Weibert asked § 87(2)(b) to step out of his vehicle. Prior to being asked to exit the vehicle, § 87(2)(b) had been sitting with his hands in his lap in plain view for the duration of the incident, and had not raised his voice or done anything to warrant being asked to step out. Before § 87(2)(b) exited his car, he asked Officer Weibert for his name and shield number and the officer said, "No problem. You'll have my name and shield number in a minute. Please just step out of the car." § 87(2)(b) proceeded to exit his vehicle, however, in his initial complaint, § 87(2)(b) stated that he initially verbally refused to exit the vehicle.

As § 87(2)(b) stepped out of his vehicle, he noticed Officer Tiernan open his passenger's side front door. § 87(2)(b) stated, "You're searching my car? Are you serious? I don't give you consent to search my car." Officer Weibert then interrupted § 87(2)(b) and asked him if he had any weapons or sharp objects on him. § 87(2)(b) told the officer that he did not. In § 87(2)(b)'s phone statement, he indicated that he instinctually lifted his arms up over his head when Officer Weibert asked him if he had any sharp objects on him. Officer Weibert frisked § 87(2)(b)'s pants pockets, waistband, hoodie pocket, armpits, and crotch area. Officer Weibert did not enter § 87(2)(b)'s pockets. § 87(2)(b) was wearing a black hooded sweatshirt with one

pocket, denim jeans, sneakers, and a wool hat. § 87(2)(b) had his house keys in his front left pocket, and loose cash and quarters, and his cell phone in his front right pocket. Nothing in § 87(2)(b)'s pockets caused a bulge, especially because his phone is so thin. § 87(2)(b) presented his Sprint Evo smart-phone at the time of the interview, and it was approximately a quarter inch thick. Officer Weibert did not indicate why he was frisking § 87(2)(b) and following the frisk, Officer Weibert told § 87(2)(b) to stand by the rear of the vehicle.

As § 87(2)(b) walked to the back, he saw Sergeant Klein open the back door to his vehicle and go inside as well. § 87(2)(b) could not see what Officer Tiernan and Sergeant Klein were doing inside of the vehicle, but stated that they were inside for a little less than five minutes. While they searched the vehicle, § 87(2)(b) asked why he was pulled over and Officer Weibert simply responded, "Your tints." This comment confused and frustrated § 87(2)(b). § 87(2)(b) § 87(2)(b) § 87(2)(b), and following that incident, he had all four of his side window tints removed completely. § 87(2)(b) asked Officer Weibert which window he was speaking about in particular. Officer Weibert pointed to his rear driver's side window and then tapped on it. In § 87(2)(b)'s telephone statement, he stated that Officer Weibert pointed to the rear passenger's side window when he was asked which window was tinted. § 87(2)(b) explained his rear window is tinted, however, to the best of his knowledge that window is allowed to be tinted. No officer indicated that his rear window tint was the reason for the car stop.

§ 87(2)(b) told Officer Weibert that he had the receipt in his car to prove that he did not have tints and at this point, Officer Tiernan and Sergeant Klein exited his vehicle and returned to their vehicle. Officer Weibert told § 87(2)(b) to take a seat in his car, and § 87(2)(b) complied, while Officer Weibert went back to his vehicle. About two minutes later Officer Weibert returned to § 87(2)(b) with § 87(2)(b)'s identification in hand. § 87(2)(b) tried to hand the receipt proving he had his tints removed to Officer Weibert, but the officer did not take the receipt and stated, "Don't worry. I believe you." Officer Weibert returned to his vehicle and then drove off. § 87(2)(b) took down the vehicle's license plate number in his phone and texted it to himself. At 11:54am he received a text "§ 87(2)(e), § 87(2)(f)." § 87(2)(b) was not issued any summonses as a result of this incident.

§ 87(2)(b) then called 311 and filed this complaint via the CCRB's Call Processing System. After that, he went to a store, bought that day's newspaper, videotaped it and videotaped his car to prove that there were no tints on his windows on the date of the incident.

Other Evidence:

At the time of his interview, § 87(2)(b) presented pictures of his vehicle that he stated he took on March 8, 2012 (encl. 8F-H). He did not want to provide the originals, thus black and white photo copies were made. § 87(2)(b) stated that the pictures show that his vehicle's front four windows had no tints on them. § 87(2)(g)

§ 87(2)(b) also provided an invoice from RF Autosound and Security Auto Shop dated March 8, 2012. The invoice lists that a Lexus GS 430, with license plate number § 87(2)(b) had tints removed from four windows, which cost \$80.00 (encl. 8D). On February 12, 2013, the undersigned traveled to RF Autosound and Security located at 101-21 94th Avenue in Queens. At the store, an employee who declined to identify himself reviewed the invoice that § 87(2)(b) provided to the CCRB. The employee confirmed that the receipt was one that RF Autosound and Security issues upon completion of a job. The employee added that the date on the top of the

invoice is the date that the job is completed. The employee also explained that when a store employee writes, "tints removed" on an invoice, it means that all of the tints on windows that can roll down were completely removed. The employee indicated that \$80.00 is what the store charges for a four-window tint removal.

§ 87(2)(b) also provided two summonses § 87(2)(b), which he stated led him to get his tints removed on March 8, 2012 (encl. 8I-J).

On June 21, 2012, § 87(2)(b) sent the CCRB a video broken up into five segments that he indicated he recorded on March 12, 2012 (encl. 8L). The video segments can be located embedded inside of IAs number 36, 38, 39, 40, and 41. In the first portion of the video, § 87(2)(b) buys a bottle of water and a newspaper that is dated March 12, 2012 (encl. 8M). The two items are then placed in a black plastic bag and § 87(2)(b) begins to walk out of the store. In the second portion of the video, § 87(2)(b) is walking on the sidewalk, carrying a black plastic bag. § 87(2)(b) then walks up to a black Lexus and shows the license plate § 87(2)(b) "§ 87(2)(b)" (encl. 8N).

In the latter portions of the video, § 87(2)(b) focuses his phone's camera on the windows of his vehicle, showing that his windows have no tints. At one point, § 87(2)(b) focuses his camera on the trunk window of his car, and states that that window is tinted, however, he adds that the officers involved only indicated that his rear driver's side and rear passenger's side windows were tinted.

§ 87(2)(b)

NYPD Statements:

Subject Officer: PO JAMES WEIBERT

- *Officer Weibert is a § 87(2)(b)-year-old White male, who stands 5'10" tall, weighs 200 pounds, and has brown hair and blue eyes.*
- *Officer Weibert was assigned to anti-crime, worked with Officer Matthew Tiernan and Sergeant Aaron Klein, assigned to unmarked vehicle number 526, dressed in plainclothes, and worked from 7:05 a.m. until 3:40 p.m.*

Memo Book (encl. 9A-C):

At 11:50am, Officer Weibert noted that he had one male stopped at 129th Avenue and Guy R. Brewer Boulevard. Officer Weibert noted that he completed a UF-250 for the incident for criminal possession of a weapon. The 250 was prepared for § 87(2)(b)

Stop, Question and Frisk Report (encl. 10):

Officer Weibert prepared UF-250 number § 87(2)(b) for § 87(2)(b) following this incident. Officer Weibert listed that at 11:55am, he stopped § 87(2)(b) for five minutes at 129th Avenue and Guy R. Brewer Boulevard for suspected criminal possession of a weapon. Officer Weibert had been observing § 87(2)(b) for one minute prior to the stop. Officer Weibert cited a suspicious bulge caused by a cell phone, actions indicative of engaging in a drug transaction, furtive movements, actions indicative of engaging in a violent crime, wearing clothes commonly used in commission of crime, and the odor of marijuana as the circumstances that led to the stop. The 250 also documented that § 87(2)(b) was frisked. Officer Weibert cited inappropriate attire—possibly concealing a weapon, furtive movements, actions indicative of engaging in

violent crimes, and violent crime suspected as the reasons for the frisk. Officer Weibert also cited, an ongoing investigation i.e. robbery pattern, that the area has a high incident of reported offense of type under investigation, and that the time of day, day of week, and/or season correspond to reports of criminal activity. Officer Weibert listed § 87(2)(b)'s demeanor as "agitated," and he noted that § 87(2)(b) said, "Thank you" when the incident concluded.

CCRB Statement:

On June 1, 2012, Officer Weibert provided an in-person CCRB statement (encl. 11A-C) which is summarized below.

On March 12, 2012, at approximately 11:50am, Officer Weibert was in his vehicle with Officer Tierney and Sergeant Klein, driving Westbound on Baisley Boulevard in Queens. Officer Weibert was driving, and as he approached Guy R. Brewer Boulevard, he saw a car driving Southbound § 87(2)(b)'s vehicle) with excessively tinted windows. Officer Weibert could not recall which windows were tinted, but he indicated that from his police experience, he knew that the vehicle had excessive tints. Officer Weibert stated that in order for a tint to be legal, it must let in 70% light transmittal, which is almost clear, so when a window appears black, the window tint is excessive. Officer Weibert indicated that he pulled the vehicle over on 129th Avenue and Guy R. Brewer Boulevard, but he could not recall whose decision it was to conduct the car stop or if the officers had a discussion before stopping the vehicle.

As Officer Weibert approached § 87(2)(b)'s vehicle, he saw § 87(2)(b) lean down towards the center of his vehicle, to the point where Officer Weibert could not see § 87(2)(b)'s body. Officer Weibert could not recall if § 87(2)(b)'s back window was tinted or not, but he recalled being able to see § 87(2)(b) through the back window. Officer Weibert indicated that it looked as if § 87(2)(b) may have been hiding something, however, Officer Weibert could not see what § 87(2)(b) was doing because he was dipped down and his hands were out of view. Officer Weibert thought that § 87(2)(b) may have been reaching for his paperwork, however, when Officer Weibert reached the driver's side window, which was down, he saw that § 87(2)(b) did not have his paperwork in his hands.

As Officer Weibert approached § 87(2)(b)'s vehicle, he detected the odor of marijuana. As he got closer, the smell became stronger, and Officer Weibert believed that the odor was emanating from inside of § 87(2)(b)'s vehicle. He did not recall if he observed any additional indications that marijuana had been inside of the vehicle. Officer Weibert did not recall if § 87(2)(b)'s windows were down as he approached the vehicle, or at what point they were rolled down, however, as stated above, § 87(2)(b)'s driver's side window was rolled down by the time Officer Weibert reached that window.

Officer Weibert approached the driver's side window, and he believed that Officer Tiernan and Sergeant Klein approached the passenger's side. § 87(2)(b) was the only individual in the vehicle, and Officer Weibert asked him for his license, registration, and insurance. § 87(2)(b) asked why he had been stopped, and did not provide the paperwork. Officer Weibert did not explain why § 87(2)(b) was stopped, but instead again asked § 87(2)(b) for his license, registration, and insurance. § 87(2)(b) eventually provided the aforementioned paperwork, but Officer Weibert could not recall how many times he asked § 87(2)(b) to provide the documents and how long it took for § 87(2)(b) to comply.

After § 87(2)(b) provided his license, registration, and insurance, Officer Weibert asked him to step out of his vehicle. After § 87(2)(b) exited, Officer Weibert briefly frisked § 87(2)(b)'s

waistband. Officer Weibert asked § 87(2)(b) to step out of his vehicle and frisked him because § 87(2)(b) made him fear for his safety. Specifically, Officer Weibert cited § 87(2)(b)'s furtive movement as the officers approached, the odor of marijuana, and § 87(2)(b)'s initial refusal to comply with police orders as the reasons for the frisk. Officer Weibert did not recall any bulges on § 87(2)(b). When presented with the 250 that he prepared for the incident, Officer Weibert could not recall why he checked the box indicating that § 87(2)(b) had a bulge in his pocket. Officer Weibert did not recover any contraband from the frisk.

Following the frisk, Officer Weibert entered § 87(2)(b)'s vehicle through the driver's side front door to look around the driver's seat and the area around the seat. Officer Weibert did not open any compartments in the vehicle during the search. During the search, Officer Weibert still detected an odor of marijuana emanating from inside the vehicle. Officer Weibert could not recall if the other two officers searched the vehicle as well. Officer Weibert cited § 87(2)(b)'s furtive movement as the officers approached, the odor of marijuana, and § 87(2)(b)'s agitated demeanor and initial refusal to comply with police orders as the reasons for the vehicle search.

Officer Weibert did not recover any contraband from inside of § 87(2)(b)'s vehicle, so he prepared a Stop, Question and Frisk Report for the incident and released § 87(2)(b). Officer Weibert did not issue § 87(2)(b) a summons out of discretion and instead released him with a warning. Officer Weibert indicated that he did not use a tint reader on § 87(2)(b)'s vehicle because he does not carry one.

Officer Weibert added that at some point during the incident, § 87(2)(b) asked him for his name and shield number. Officer Weibert could not recall at which point during the incident § 87(2)(b) made the aforementioned request, but Officer Weibert stated that he provided his name and shield number verbally to § 87(2)(b). Officer Weibert added that at some point during the incident, he explained to § 87(2)(b) why he had been stopped, but he could not recall at which point.

Officer Weibert was presented with the photo of § 87(2)(b)'s vehicle that § 87(2)(b) provided to the CCRB. Officer Weibert could not recall if the car in the picture was § 87(2)(b)'s vehicle, and stated that the picture did not refresh his memory as to which of § 87(2)(b)'s windows were tinted.

Officer Weibert was also presented with the Stop, Question and Frisk report that he prepared for the incident. As stated above, Officer Weibert could not recall if § 87(2)(b) had a bulge in his pocket and he could not recall what § 87(2)(b) was wearing or why he checked the "clothing commonly used in commission of crime" box or the "inappropriate attire" box. Officer Weibert added that he checked the "actions indicative of a drug transaction" box because of § 87(2)(b)'s furtive movement and the odor of marijuana he detected. Officer Weibert stated that he checked the "violent crime suspected" and "actions indicative of engaging in violent crime" boxes because he thought that § 87(2)(b) may have concealed a weapon when he dipped down as the officers approached.

Subject Officer: PO MATTHEW TIERNAN

- *Officer Tiernan is a § 87(2)(b)-year-old White male, who stands 5'11" tall, weighs 250 pounds, and has brown hair and brown eyes.*
- *Officer Tiernan was assigned to anti-crime, worked with Officer James Weibert and Sergeant Aaron Klein, was assigned to unmarked vehicle number 526, was dressed in plainclothes, and worked from 7:05am until 10:40pm.*

Memo Book (encl. 12A-C):

On Officer Tiernan's fly sheet, he noted that at 11:55am, there was a 93Q (other report prepared) by Officer Weibert on 129th Avenue and Guy R. Brewer Boulevard.

CCRB Statement:

On June 13, 2012, Officer Tiernan provided an in-person CCRB statement (encl. 13A-C). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

On March 12, 2012, at approximately 11:50am, Officer Tiernan was in the backseat of an unmarked vehicle, being driven by Officer Weibert. Officer Weibert noticed a vehicle in the right lane with excessive window tints and he pointed the vehicle out to Officer Tiernan, who also noticed that the car's front and rear driver's windows were tinted. Officer Weibert decided that he would pull the vehicle over for the window tints.

Officer Weibert pulled the vehicle over (which belonged to § 87(2)(b) on 129th Avenue and Guy R. Brewer Boulevard. Officer Weibert approached § 87(2)(b)'s vehicle on the driver's side, while Officer Tiernan approached on the passenger's side. Sergeant Klein did not exit the vehicle with Officer Weibert and Officer Tiernan.

As Officer Tiernan got closer to the vehicle, he saw § 87(2)(b) through his car's back window. § 87(2)(b) quickly turned and looked at the officers, and then turned back around and dipped his right shoulder down, in a way that looked like he may have been hiding something in the center console or under the two front seats, however, Officer Tiernan did not actually see § 87(2)(b) open the center console. When Officer Tiernan reached the passenger's side window, § 87(2)(b) still had the window rolled all the way up. When § 87(2)(b) rolled the window down, Officer Tiernan detected a strong odor of marijuana, which he believed was coming from inside of the vehicle. Officer Tiernan noted that he had not detected the odor of marijuana prior to the window being rolled down.

About 15 seconds after Officer Weibert initially approached, he asked § 87(2)(b) to step out of his vehicle. Officer Tiernan was not sure if Officer Weibert frisked § 87(2)(b) when he stepped out, as he was on the other side of the car.

At this point, Officer Tiernan entered § 87(2)(b)'s vehicle through the front passenger's side door, and searched under the front passenger's seat, to the left of the seat, and in the center console. Officer Tiernan searched the vehicle because he suspected that § 87(2)(b) was either in possession of a weapon, or of marijuana. Officer Tiernan initially stated that he only searched § 87(2)(b)'s vehicle due to the odor of marijuana, but later Officer Tiernan stated that § 87(2)(b)'s furtive movement as the officers approached made him fear that § 87(2)(b) was hiding a weapon, and that was why he searched the vehicle. Officer Tiernan noted that he was not instructed by Sergeant Klein to search the vehicle. He added that Officer Weibert entered § 87(2)(b)'s vehicle through the driver's side door. Officer Tiernan did not know where Officer Weibert searched exactly and if he discovered any contraband. Officer Tiernan and Officer Weibert did not have any discussion before or during the search regarding the search. At this time, Sergeant Klein was out of the police vehicle and standing with § 87(2)(b). § 87(2)(b) was yelling at Sergeant Klein during the search.

Officer Tiernan did not recover any contraband from § 87(2)(b)'s car. Following the search, Officer Weibert returned § 87(2)(b)'s identification and the officers left the scene. Officer Tiernan did not hear § 87(2)(b) ask Officer Weibert for his name or shield number. No officer ran § 87(2)(b)'s identification, because they did not have a computer in their vehicle. Officer Tiernan did not know why the officers did not run § 87(2)(b)'s information over the radio.

The officers did not issue § 87(2)(b) a summons for the window tints, and instead gave § 87(2)(b) a warning and told him to have his tints removed. Officer Tiernan added that no officer used a tint reader on § 87(2)(b)'s vehicle, as no officer had one on them.

During his interview, Officer Tiernan was presented with the pictures of § 87(2)(b)'s vehicle and the receipt explaining that his tints were removed, both which were provided by § 87(2)(b). Officer Tiernan indicated that on the incident date, § 87(2)(b)'s vehicle did not look like the vehicle in the pictures.

Officer Tiernan was also presented with the Stop, Question and Frisk Report prepared for the incident. Officer Tiernan did not recall a bulge in § 87(2)(b)'s pocket.

Subject Officer: SGT AARON KLEIN

- *Sergeant Klein is a § 87(2)(b)-year-old White male, who stands 5'11", weighs 205 pounds, and has brown hair and hazel eyes.*
- *On March 12, 2012, Sergeant Klein started his day off as the desk officer, but at approximately 8:45am, he was reassigned to anti-crime supervisor. Once he began to perform his duties as anti-crime supervisor, he worked with Officer James Weibert and Officer Matthew Tiernan, he was in unmarked vehicle number 526, dressed in plainclothes, and worked from 6:55am until 6:38pm.*

Memo Book (encl. 14A-C):

On Sergeant Klein's fly sheet, he noted that at 11:50am, he had one male stopped § 87(2)(b) § 87(2)(b) Officer Weibert prepared a 250 for the incident.

CCRB Statement:

On June 13, 2012, Sergeant Klein provided an in-person CCRB statement (encl. 15A-C).
§ 87(2)(g)

Sergeant Klein stated that Officer Weibert was the first to observe a vehicle with excessive window tints driving southbound on Guy R. Brewer Boulevard. Officer Weibert pointed out the vehicle to the other officers, at which point Sergeant Klein noticed that the car's windows did look excessively tinted, however at the time of his interview, Sergeant Klein could not recall which of the vehicle's windows were tinted. Officer Weibert activated the vehicle's lights and sirens and pulled the motorist § 87(2)(b) over. Sergeant Klein indicated that it was Officer Weibert's decision to pull § 87(2)(b) over, however, he did not have any problem with Officer Weibert making that decision, and therefore did not object. Sergeant Klein stated that when § 87(2)(b) was initially stopped, the officers just wanted to tell him that his tints were illegal, and instruct him to have them fixed.

Once § 87(2)(b) was pulled over, Officer Weibert and Officer Tiernan approached § 87(2)(b)'s driver's side and passenger's side respectively. As Sergeant Klein approached the vehicle, he looked through the car's rear window and noticed § 87(2)(b) moving around a lot

inside of the car. Sergeant Klein could not recall if that window was tinted, but he stated that he was able to see § 87(2)(b) reach under the seats for approximately one to two seconds. Sergeant Klein was not sure what § 87(2)(b) was doing, but he stated that the movements were consistent with § 87(2)(b) either trying to hide something under the seats, or pick something up from under there.

While Officer Weibert and Officer Tiernan spoke with § 87(2)(b) Sergeant Klein stood near the trunk of the vehicle, slightly to the right. Sergeant Klein could not hear what § 87(2)(b) and the officers were speaking about, but after about two minutes, Officer Weibert asked § 87(2)(b) to step out of the vehicle, and § 87(2)(b) complied. Once § 87(2)(b) was out of the vehicle, he was frisked by Officer Weibert. Sergeant Klein did not know why Officer Weibert frisked § 87(2)(b) at the time, but was later told by Officer Weibert that Officer Weibert feared for his safety and the safety of the other officers because § 87(2)(b) was becoming increasingly irate, and he wanted to make sure that § 87(2)(b) did not have any weapons on him. Sergeant Klein stated that he did not see any bulges on § 87(2)(b)'s waistband, but noted that that did not mean that there were no bulges, as he could not see all of § 87(2)(b)'s pockets. Sergeant Klein added that he did not instruct Officer Weibert to frisk § 87(2)(b).

Officer Weibert then instructed § 87(2)(b) to stand near the rear of the vehicle with Sergeant Klein. § 87(2)(b) complied, at which point Officer Weibert and Officer Tiernan entered § 87(2)(b)'s vehicle through the two front doors. Sergeant Klein indicated that he did not know why the officers went into § 87(2)(b)'s vehicle, and he did not know what the officers did while they were inside, as his attention was focused on § 87(2)(b) who was still upset while standing with Sergeant Klein. Sergeant Klein tried to explain to § 87(2)(b) why he had been pulled over in order to calm him down, but § 87(2)(b) told Sergeant Klein, "That's bullshit, my tints are legal."

Sergeant Klein did not ask the officers why they had searched the car until after the incident had ended, at which point Officer Weibert told Sergeant Klein that he searched the car because he had detected a strong odor of marijuana emanating from the vehicle. At no point during the incident did Sergeant Klein detect the smell of marijuana, but he noted that he was standing near the rear of the vehicle, far from the open windows.

Sergeant Klein stated that no officer used a tint reader on § 87(2)(b)'s vehicle, because they did not have one. No summons was issued to § 87(2)(b) because Officer Weibert made the determination that they would just let § 87(2)(b) go with a warning. Sergeant Klein stated that Officer Weibert did not run this decision by him prior to making it, however, Sergeant Klein did not object with Officer Weibert's decision, so he did not intervene. At no point did Sergeant Klein hear § 87(2)(b) request Officer Weibert's name or badge number, and as a result at no point did he hear Officer Weibert refuse to provide that information.

Sergeant Klein was presented with a picture of § 87(2)(b)'s vehicle that § 87(2)(b) provided. Sergeant Klein could not recall if the car in the photo was the car that § 87(2)(b) was driving on the date of the incident. He added that he could not tell if the car's windows in the picture were excessively tinted or not.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of June 25, 2012, with regard to the incident (encl. 21)

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
[redacted]
[redacted]
[redacted]

Civilian CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 5).

Subject Officers CCRB History

- Officer Weibert has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2).
- Officer Tiernan has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 3).
- Sergeant Klein has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 4).

Conclusion

Identification of Subject Officers

Officer Weibert, Officer Tiernan, and Sergeant Klein confirmed their interaction with [§ 87(2)(b)] and while [§ 87(2)(b)] stated that Sergeant Klein searched his vehicle, Officer Weibert admitted to searching the car and Officer Tiernan confirmed that Officer Weibert searched the vehicle. [§ 87(2)(g)]
[redacted]
[redacted]
[redacted]

Investigative Findings and Recommendations

Allegation A: Abuse of Authority—Sgt. Aaron Klein supervised the stop of the car in which [§ 87(2)(b)] was an occupant.

It is undisputed that [§ 87(2)(b)] was pulled over for excessively tinted windows. [§ 87(2)(b)] contends that he had the tints on his front four windows removed several days prior to the incident, on March 8, 2012, following summonses he received [§ 87(2)(b)] [§ 87(2)(b)] provided an invoice from RF Autosound and Security (encl. 23F) which documented that [§ 87(2)(b)] had the tints on his front and passenger windows removed on March 8, 2012. [§ 87(2)(b)] also provided pictures of his vehicle, which he stated were from March 8, 2012, and a video that he took on the incident date, which showed that his vehicle had no window tints. [§ 87(2)(b)] did note that his rear window was tinted, however, he repeatedly stated that the officers indicated that he was pulled over for tints on his back passenger windows, and never indicated that he was pulled over because of his rear window tints.

Officer Weibert, Sergeant Klein, and Officer Tiernan all testified that [§ 87(2)(b)] was driving a vehicle with excessively tinted windows, which caused Officer Weibert to pull [§ 87(2)(b)] over. Officer Weibert and Officer Tiernan also stated that they detected an odor of marijuana emanating from the vehicle as they approached (the alleged odor of marijuana is not being considered as a factor in analyzing this stop, as that odor was not detected until after the stop had been initiated.) The officers did not make any memo book entries or prepare any other documentation citing window tints as the reason why [§ 87(2)(b)] was stopped. [§ 87(2)(b)]

was not issued a summons for his window tints, despite having been allegedly uncooperative with the officers, nor was a tint reader used on his windows. § 87(2)(b), § 87(2)(g)

Vehicle and Traffic Law (VTL) section 375 (12-a) (2) (encl. 1A-B) “No person shall operate any motor vehicle upon any public highway, road or street [if] the sidewings or side windows of which on either side forward or adjacent to the operator’s seat are composed of, covered by or treated with any material which has a light transmittance of less than seventy percent.”

Subsection four of the same law reads in pertinent part that, “A rear window may have a light transmittance of less than seventy percent if the vehicle is equipped with side mirrors on both sides of the vehicle so adjusted that the driver thereof shall have a clear and full view of the road and condition of traffic behind such vehicle.”

The officers stated that § 87(2)(b) s vehicle was stopped because he was in violation of the aforementioned VTL. § 87(2)(b), § 87(2)(g)

Allegation B: Abuse of Authority—PO James Weibert frisked Davis § 87(2)(b)

It is undisputed that Officer Weibert frisked § 87(2)(b) after he exited his vehicle. § 87(2)(b) § 87(2)(b) stated that he had been compliant and kept his hands and body motionless and in plain view, however, he acknowledged rolling down his window after he was pulled over. § 87(2)(b) stated that he did not smoke and denied that an odor of marijuana was emanating from his vehicle. In his initial complaint, however, he stated that he smokes cigarettes. § 87(2)(b) noted that he asked Officer Weibert for his name and shield number after Officer Weibert instructed him to exit the vehicle. Officer Weibert then repeated the directive at which point § 87(2)(b) stated that he exited the vehicle. In his initial complaint, however, § 87(2)(b) stated that he initially briefly verbally refused to exit the vehicle. In § 87(2)(b) s telephone statement, he stated that once he was outside of his vehicle, Officer Weibert asked him if he had anything sharp in his pockets, at which point § 87(2)(b) instinctually raised his arms over his head and Officer Weibert frisked him.

Officer Weibert stated that he frisked § 87(2)(b) because § 87(2)(b) made a furtive movement as the officers approached which was consistent with either hiding or reaching for something, which Officer Weibert thought may have been a weapon. However, Officer Weibert did not see § 87(2)(b) s hands when he made the furtive movement, § 87(2)(g)

Additionally, according to Officer Weibert, § 87(2)(b) was agitated, refused to comply with police orders, and an odor of marijuana was emanating from his vehicle. Officer Weibert documented the furtive movement in the Stop, Question and Frisk Report that he prepared for the incident, however, he also documented that he observed a bulge in § 87(2)(b) s pocket and that § 87(2)(b) s inappropriate attire led to the frisk, but Officer Weibert was unable to recall why he checked those boxes at the time of his CCRB statement. Officer Tiernan stated that § 87(2)(b) looked at the officers as they approached his vehicle, before dipping his right shoulder down towards the center console. Sergeant Klein stated that § 87(2)(b) reached under the seats for approximately

one to two seconds as the officers were approaching his vehicle. Sergeant Klein did not detect any odor of marijuana emanating from the vehicle, but he was standing near the back of the vehicle, away from the open windows and was later told by Officer Tiernan that an odor of marijuana was emanating from § 87(2)(b)'s vehicle.

§ 87(2)(g)

Allegation C: Abuse of Authority—PO James Weibert searched the car in which § 87(2)(b) was an occupant.

Allegation D: Abuse of Authority—PO Matthew Tiernan searched the car in which § 87(2)(b) was an occupant.

Allegation E: Abuse of Authority—Sgt. Aaron Klein supervised the search of the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after he was asked to exit his vehicle, Officer Tiernan entered and searched his vehicle. § 87(2)(b) also alleged that Sergeant Klein searched his vehicle. § 87(2)(b) added that he had not been in possession of or smoking marijuana prior to the incident, nor had anyone ever smoked marijuana in his vehicle. During § 87(2)(b)'s sworn statement, he stated that he does not smoke anything, however, in his initial complaint, he acknowledged that he smokes cigarettes. Officer Weibert and Officer Tiernan both admitted to searching § 87(2)(b)'s vehicle, while Sergeant Klein stated that he did not search the vehicle, because he stood outside with § 87(2)(b) § 87(2)(g). Officer Weibert could not recall whether Sergeant Klein searched the vehicle. Officer Weibert and Officer Tiernan stated that they searched § 87(2)(b)'s vehicle because § 87(2)(b) had made a furtive movement as the officers approached and because a strong odor of marijuana was emanating from inside of his vehicle. Neither officer recovered any marijuana from inside of § 87(2)(b)'s vehicle. Sergeant Klein did not detect the odor of marijuana, but he stated that he was standing near the rear of § 87(2)(b)'s vehicle, away from the open windows.

Smell of marijuana smoke alone is sufficient to provide officers with probable cause to search a vehicle, People v. Chestnut 43 A.D.2d (App. Div. 3rd Dep't. 1974) (encl. IA-C).

§ 87(2)(b), § 87(2)(g)

Allegation F: Abuse of Authority—PO James Weibert refused to provide his name and shield number to § 87(2)(b).

§ 87(2)(b) stated that as he was getting out of his vehicle, he asked Officer Weibert for his name and shield number. § 87(2)(b) alleged that Officer Weibert responded, "No problem. You'll have my name and shield number in a minute. Please just step out of the car," but never

provided such information. Officer Weibert stated that at an unspecified point in the incident, § 87(2)(b) requested his name and shield number, which he provided verbally. Neither Officer Tiernan nor Sergeant Klein could recall § 87(2)(b) requesting Officer Weibert's name and shield number.

§ 87(2)(b), § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g), § 87(4-b)
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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date